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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/798,498	03/11/2004	Pierre Craen	1348	6306
156	7590	11/18/2005	EXAMINER	
KIRSCHSTEIN, OTTINGER, ISRAEL & SCHIFFMILLER, P.C. 489 FIFTH AVENUE NEW YORK, NY 10017			LE, UYEN CHAU N	
			ART UNIT	PAPER NUMBER
			2876	

DATE MAILED: 11/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/798,498

Applicant(s)

CRAEN ET AL.

Examiner

Uyen-Chau N. Le

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>06/05</u> . | 6) <input type="checkbox"/> Other: ____. |

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DETAILED ACTION

Claim Objections

1. Claims 1 and 4 are objected to because of the following informalities:

Re claim 1, line 11: Substitute "second optical characteristics" with - the second optical characteristics --.

Re claim 4, line 11: Substitute "second optical characteristics" with - the second optical characteristics --.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-7, 10, 11 and 13-19 are rejected under 35 U.S.C. 102(e) as being anticipated by Massieu (US 20050218231 A1).

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Re claims 1-7, 10, 11 and 13-19: Massieu discloses An management for electro-optically reading indicia having parts of different light reflectivity, comprising: a) a variable optical lens having a pair of light-transmissive liquids [56, 58] arranged along an optical path, the liquids being immiscible, of different optical indices of refraction, and of substantially same density (fig. 2; paragraph [0053]), one of the liquids having a shape in a rest state for optically modifying light passing through the one liquid along the optical path toward the indicia to have a first optical characteristic (i.e., first liquid 56) (paragraph [0054], lines 12-15); and b) a controller (i.e., microprocessor 24) for applying a voltage across the one liquid to change the shape thereof, and for optically modifying the light to have a second different optical characteristic (paragraph [0056]); a light source [42a-42c] for emitting the light to the variable lens (paragraph [0040]); and wherein the first and second optical characteristics are different focal planes spaced apart along the optical path at different working distances relative to the variable lens (paragraph [0056]); wherein the light source is a laser for emitting the light as a laser beam (paragraph [0043], lines 5+); a sensor (i.e., optical sensor 14) for receiving the light from the variable lens (paragraph [0037]); and wherein the first and second optical

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characteristics are different imaging planes spaced apart along the optical path at different working distances relative to the variable lens (paragraph [0056]); wherein the sensor is an array of imaging cells (paragraph [0051], lines 6+); a scanner for scanning at least one of the light, and a field of view, over the indicia 20 (fig. 1; paragraph [0037]); wherein the variable lens includes at least one fixed focal lens spaced apart from the liquids along the optical path; wherein there are two fixed focal lenses having positive and negative optical powers respectively, and wherein the two fixed focal lenses are located at opposite ends of the variable lens (fig. 2; paragraphs [0054-0055]); wherein a first electrode is disposed at one side of the one liquid, and wherein a second electrode is immersed in the other liquid at an opposite side of the one liquid, and wherein the voltage is applied across the electrodes (paragraphs [0054-0056]).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at

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the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 9 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Massieu in view of Berge et al (US 6,369,954). The teachings of Massieu have been discussed above.

Re claims 9 and 12: Massieu has been discussed above, but is silent with respect to one liquid is electrically insulating and the other of the liquids is electrically conductive, wherein the variable lens has an electrically insulating wall on which the one liquid rests, and wherein the second electrode contacts the insulating wall.

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Berge et al teaches a variable focus lens comprising a chamber (12) filled with a first liquid (13), a drop of a second liquid (11) being disposed at rest on a region of a first surface of an insulating wall of the chamber, the first and second liquids being non miscible, of different optical indexes and of substantially same density. The first liquid is conductive and the second liquid is insulating. The lens further comprises means for applying a voltage between the conductor liquid and an electrode (16) placed on the second surface of said wall; and centering means for maintaining the centering of the edge of the drop while the voltage is applied and for controlling the shape thereof (abstract and fig. 1; col. 3, lines 3-39).

It would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to further employ the insulating wall and the conductive liquid and the insulating liquid of Berge et al into the system as taught by Massieu in order to provide Massieu with an alternative means for forming a variable focus lens system using immiscible liquids having the same density. Furthermore, such modification would have mere been a substitution of equivalents well within the ordinary skill in the art, and therefore an obvious expedient.

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7. Claims 8 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Massieu in view of Danielson et al (US 4877949 A). The teachings of Massieu have been discussed above.

Re claims 8 and 20: Massieu has been discussed above, but is silent with respect to an analyzer for determining whether the indicia was successfully scanned and read, and wherein the controller is operative for applying the voltage upon a determination that the indicia was not successfully scanned and read.

Danielson et al teaches a control and processing means 10 serves as an analyzer for determining if a valid total reading had been obtained, if not proper high voltage was building up for further series of flashes/scans (col. 8, lines 59-62 and col. 11, lines 30-37).

It would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to incorporate the determination of Danielson et al into the system as taught by Massieu in order to provide Massieu with a more accurate system in which an invalid/unsuccessful scan/read can be determined readily so that repeating scans can be performed instantaneously, preventing the system from producing unexpected misread results due to errors occurred during reading process.

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Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The patents to Rudeen (US 5641958 A); Berge et al (WO 9918456 A1); Kitayama et al (JP 2001013306 A); Onuki et al (US 6449081 B1); Kroupenkine et al (US 6545816 B1); Kroupenkine et al (US 6545815 B2); Tsuboi et al (US 6702483 B2); Aizenberg et al (US 6778328 B1); Onuki et al (US 6806988 B2); Ito et al (US 20050040237 A1); Chandross et al (US 6936196 B2); Onuki et al (US 6950219 B2) are cited as of interest and illustrate a similar structure to an optical adjustment for increased working range and performance in electro-optical readers.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Uyen-Chau N. Le whose telephone number is 571-272-2397. The examiner can normally be reached on First Monday 5:30AM-1:30PM and Tues-Fri 5:30AM-3PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Lee can be reached on 571-272-2398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Uyen-Chau N. Le
Examiner
Art Unit 2876

November 10, 2005